UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2022/057
Judgment No.:	UNDT/2023/021
Date:	28 March 2023
Original:	English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

JACKSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Edwin Nhliziyo

Counsel for the Respondent:
Nicole Wynn, AS/ALD/OHR, UN Secretariat
Maureen Munyolo, AS/ALD/OHR, UN Secretariat

Introduction and procedural history

1. On 1 July 2022, the Applicant, a former P-4 Finance and Budget Officer with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic ("MINUSCA") in Bangui, filed an application at the United Nations Dispute Tribunal contesting the 26 January 2022 decision by the Assistant-Secretary-General Office of Human Resources ("ASG/OHR"). The details of the contested decision are summarized as follows:

> […] retroactive payment of tax liability for (a) State tax amounting to $70,131 over the period 2015-2020 and (b) underpayment of $7,868 federal tax due to inaccurate earnings statement provided by the tax office.

2. The Respondent filed a reply to the application on 5 August 2022 denying any breach of discretionary powers and asking the Dispute Tribunal to dismiss the claim. Further, the Respondent argued that part of the claim is moot as the Administration met its obligations toward reimbursement to the Applicant of the 2019-2020 State tax liability.

3. The Tribunal heard the case on 2 March 2023 during which oral evidence was adduced from the Applicant and Mr. Quazi Islam, Chief, Income Tax Unit ("ITU").

4. The parties filed their closing submissions on 9 March 2023.

Facts

5. The Applicant is a citizen of the United States of America ("USA") for whom the Organization reimburses taxes. He has been domiciled in the state of North Carolina since 2015. He retired from the Organization on 1 October 2021.[1]

[1] Reply, para. 5.

State Tax

6. Previously, while working at UN Headquarters, the Applicant was a resident of the state of New Jersey and paid his taxes to the State. When he moved to work in East Timor and after paying his tax for two years, ITU advised him that he was not required to pay State tax because his income was earned abroad. This was confirmed by the Respondent's witness.[2] In 2015, he moved his family to North Carolina and based on the ITU prior advice, that he was not required to pay State tax[3] until 2019 when he received a letter from the North Carolina Department of Revenue ("NCDOR") enquiring about his State tax.[4]

7. On 20 November 2019, the Applicant informed ITU that he had been contacted by the tax authorities of North Carolina stating that he should pay tax for the 2015 tax year. He pointed out that his earnings were from out of State and that as such he should not pay State tax. He requested ITU's advice on the matter.[5]

Federal Tax

8. On 26 January 2018, ITU sent the Applicant a 2017 statement of taxable earnings for preparation of his 2017 tax returns. The statement of taxable earnings informed the Applicant to contact ITU immediately if he believed the earnings information was inaccurate.[6]

9. On 2 February 2018, ITU sent the Applicant a corrected 2017 statement after they discovered that the January statement was inaccurate.[7]

10. On 24 February 2020, the USA Internal Revenue Service ("IRS") informed the Applicant that he owed Federal tax of USD7,868 because he had filed incorrect returns based on an incorrect 2017 statement of taxable earnings.[8] On 26 March 2020, the

[2] Hearing transcript, page 6 and 73.
[3] Hearing transcript, page 36.
[4] Hearing transcript, pages 8-9.
[5] Application, annex A/11.
[6] *Ibid.,* para. 6 and annex R/2.
[7] *Ibid.,* para. 7 and annex R/3.
[8] Reply, para. 9; application, annex A/6.

Applicant forwarded to ITU the letter from IRS and requested ITU to reimburse him the Federal tax of USD7,868.10.[9]

11. On 27 August 2021, the Applicant contacted the Chief, Headquarters Client Support Service ("Chief/HCSS"), for his intervention regarding the outstanding tax reimbursements. He informed the Chief/HCSS that:

a. Based on the statement from NCDOR, the outstanding balance as at 27 August 2021 amounted to USD41,744.85 including penalties and interest;

b. The amount was net of USD28,462 that he had paid as a *lien* was placed on his property, and USD17,125 paid by the United Nations;

c. That based on an analysis, the actual amount due from the United Nations was USD70,131.61 comprising of USD41,744.85 as per the NCDOR statement plus reimbursement of USD28,462.76 paid by the Applicant; and

d. That in relation to Federal tax, he had received letters from the IRS regarding underpayment of tax for the 2017 and 2019 tax period which he forwarded to ITU.

12. On 23 December 2021, the Applicant requested the Assistant Secretary-General for Human Resources' ("ASG/OHR") for approval of an exception to then applicable staff rule 3.7(ii) to allow for a retroactive reimbursement of the claimed tax payments.[10]

13. On 26 January 2022, the ASG/OHR declined the Applicant's request.[11]

14. On 8 March 2022, the Applicant requested management evaluation of the ASG/OHR's decision to deny his request for reimbursement of retroactive US tax payments on an exceptional basis.

15. On 13 January 2023, the Management Evaluation Unit ("MEU") informed the

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[9] Reply, para. 9; application, annex A/5, page 4.
[10] Application, annex A/15.
[11] *Ibid.,* at annex A/2/

Applicant that they had decided to uphold the contested decision.

Applicant's submissions

16. The Applicant's case is set out below.

a. There are two issues regarding his claims, namely, (a) underpayment of Federal tax of USD7,868 due to inaccurate earnings statement provided by ITU and; retroactive state and tax over the period 2015- 2020 of USD70,131.

b. His request for reimbursement of State tax is based on staff rule 3.3 and he is entitled to reimbursement for national tax paid.

c. ITU is aware that the IRS and the NCDOR as well as other tax authorities are usually three to four years behind reviewing taxes. The one-year rule as per staff rule 3.17 makes it impossible for any recourse by the staff member which clearly contravenes the Secretary-General's intention of bringing parity among all nationalities of the United Nations. The Organization cannot penalize a staff member just because a governmental agency concerned delayed its review and the ITU further delayed its action by two years after it was first contacted.

d. The payments as per staff rule 3.17 relates to all staff and all nationalities of the United Nations and are not restricted only to USA citizens as in the case for reimbursement of income tax. Considering that the United Nations does not condone discrimination, it is inconceivable that the Secretary-General would include in the Staff Regulations and Rules a policy that is detrimental only to US Citizens.

e. The United Nations has denied his claim under staff rule 3.17 which covers allowances and entitlements such as Education grants, Home Leave, Assignment allowances etc. This debt is covered under staff rule 3:18 which is a debt to a third party. The Organization has erred by invoking a Staff Rule that does not apply to the settlement of debts accruing to third parties.

f. The payment of retroactive tax is not a novel occurrence. There are cases in the past where staff members were reimbursed by ITU as could be confirmed from the Umoja system software.

17. The Applicant requests reimbursement of the amount paid to NCDOR of USD70,131 for the 2015-2020 and Federal tax underpayment of USD7,868 for the 2017 tax year:

Respondent's submissions

18. The Respondent submits that the application is moot in part.

a. The Applicant contests the decision of the ASG/OHR not to approve an exception to staff rule 3.17(ii) to allow him to claim retroactive reimbursement of his 2017 United States Federal tax liability and his 2015-2020 State tax liability.

b. On 6 July 2020, 12 November 2021, and 25 June 2021, ITU reimbursed the Applicant USD31,272 for his 2019 and 2020 State tax liabilities.

c. On cross examination, the Applicant admitted that he received the 2019 and 2020 State tax reimbursements. Accordingly, there is no justiciable matter before the Dispute Tribunal with respect to the Applicant's claim for reimbursement of his 2019 and 2020 State taxes.

19. On the merits, the Respondent makes the following arguments:

a. The contested decision is lawful. The ASG/OHR, in consultation with ITU, lawfully exercised her discretion to not approve an exception to staff rule 3.17(ii) to allow the Applicant to claim retroactive reimbursement of his 2017 United States federal tax liability of USD6,020 and his 2015-2018 state tax liability of USD36,484.

b. The ASG/OHR considered all the relevant facts and reasons provided by the Applicant and determined that: (a) the Applicant did not meet the

requirements of staff rule 3.7(ii); (b) the Applicant should have been aware of his private legal obligations; and (c) making an exception would be prejudicial to the interests of other staff members or groups of staff members as per staff rule 12.3(b).

c. The Applicant acknowledged during cross examination that he did not make a timely reimbursement claim. Pursuant to staff rule 3.17(ii), ST/AI/1998/1 (Payment of income taxes to United States tax authorities) and the 2016-2018 Information Circulars on payment of income tax, the deadlines for requesting reimbursements were 15 August 2017, 15 August 2018, and 15 August 2019, respectfully. However, the Applicant did not make his claim until 18 May 2021, four, three, two and one years late, respectively.

d. The Applicant did not provide evidence of any extenuating circumstances that prevented him from filing timely returns. On cross examination, the Applicant acknowledged that he made an independent decision to not file state taxes in North Carolina. The Applicant made this decision upon the assumption that he was not required to file North Carolina State returns for the years 2015-2018, based on his belief that North Carolina did not tax income earned outside the state, the same as New Jersey and New York, where he resided previously. The Chief/ITU testified that the Applicant's decision not to file state returns was not based on the advice of ITU. ITU did not advise the Applicant not to file North Carolina state taxes. Pursuant to section 2 of ST/AI/1998/1, the Applicant was personally responsible to ascertain and meet his legal obligations under United States federal, state, and municipal income tax legislation.

e. The Applicant bears sole responsibility for the late submission of his 2017 Federal tax claim. On cross examination, the Applicant acknowledged that, on 2 February 2018, seven days after the error was identified, ITU sent a corrected statement of taxable earnings to his correct email address. The 2 February 2018 corrected statement of taxable earnings advised the Applicant to

ignore the erroneous 26 January 2018 statement. Yet, he did not submit an amended return within one year as required by staff rule 3.17(ii).

f. Contrary to the Applicant's suggestion, the deadline provided in staff rule 3.17(ii) does not contradict staff regulation 3.3. Staff regulation 3.3 authorizes the Secretary-General to refund to a staff member either staff assessment or income taxes paid or payable where the staff member is subject both to staff assessment and to national income taxation in respect of their United Nations salaries and emoluments. Staff rule 3.17(ii) prescribes the timelines applicable for the reimbursement of income taxes paid or payable. The scope of staff rule 3.17(ii) includes a payment to a staff member in reimbursement for national income taxation in respect of their United Nations salaries and emoluments. The Secretary-General further prescribed ST/AI/1998/1 for the implementation of staff regulation 3.3 and staff rule 3.17(ii). Section 3 of ST/AI/1998/1 states that the tax reimbursement procedures shall be announced on a yearly basis by the Controller in an information circular. In this case, the 2016-2019 Information Circulars prescribed the procedures for tax reimbursement claims, including the deadlines for requesting tax reimbursements.

g. The USA tax laws do not apply in this case. The applicable rules are the United Nations regulations and rules, ST/AI/1998/1, and the 2016-2019 Information Circulars on payment of income taxes.

20. In view of the foregoing, the Respondent requests the Tribunal to deny the application.

Considerations

21. The issue before the Tribunal concerns interpretation of staff regulation 3.3(f) and staff rule 3.17(ii). The Tribunal is reminded that a basic tenet of statutory construction prohibits courts and administrative tribunals from interpreting rules in a manner that conflicts with the statutory scheme; rather, rules must be interpreted to be

consistent with their enabling statutes.[12] Further, the Tribunal is obliged to objectively assess the basis, purpose and effects of any relevant administrative decision.[13]

Legal framework on reimbursement of taxes (State and Federal)

22. It is important that the Tribunal reiterate that the legal framework governing tax reimbursement is provided in staff regulation 3.3(f). The relevant parts provide that:

> (f) Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him or her by the United Nations, the Secretary-General is authorized to refund to him or her the amount of staff assessment collected from him or her provided that:
>
> (i)…
>
> (ii)…
>
> (iii) Payments made in accordance with the provisions of the present regulation shall be charged to the Tax Equalization Fund;

23. It is a specific provision whose legislative history and intent appears in this Tribunal's judgment, *Johnson*,[14] affirmed by UNAT in 2012[15] and it states that:

> 31. Section 18 (article V) of the Convention on the privileges and immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, provides that: "Officials of the United Nations shall […] (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations". Nonetheless, when, in 1970, the United States of America acceded to the Convention, it did so with the reservation that nationals and permanent residents of the United States shall not be exempt from taxation.
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> 32. In its Judgment No. 237 *Powell*, the former United Nations Administrative Tribunal considered at length the question of tax exemption in respect of possible reservations to section 18(b) of the Convention on the privileges and immunities of the United Nations, which forms the basis for the system outlined by the General Assembly to deal with this problem. It noted that under General Assembly resolution 973(X), a Tax Equalization Fund had been established to

[12] *Cooke* 2012-UNAT-275, para. 34.
[13] *Samandarov* 2018-UNAT-859, para. 24.
[14] UNDT/2011/144.
[15] 2012-UNAT-240.

> which assessments on staff members' salaries and emoluments were to be credited in lieu of a national income tax. The amounts credited to the Fund are entered in the accounts for each Member State's assessment. Conversely, when a staff member paid from the budget of the Organization is subject to both a staff assessment and national income tax on salaries and emoluments earned at the United Nations, that staff member is reimbursed for the national tax paid and payable on salaries and emoluments in order to relieve the effect of double taxation. The refund is deducted from the account of the State that has levied the tax.
>
> 33. The objective of General Assembly resolutions, cited in Judgment No. 237, was to ensure both equality of treatment among staff members and a form of equity among Member States irrespective of whether they choose to grant, or not to grant, an income tax exemption to their nationals.

24. In *Johnson*[16], the Applicant contested the legality of the Administration's decision that denied her claim for tax reimbursement because she had used her tax credits to pay her taxes. She had argued that the decision was contrary to the principle of equal treatment of staff members. After laying down the legal framework, the Tribunal found that the Staff Regulation, which was adopted by the General Assembly, aims at ensuring equal treatment among those staff members who, by virtue of their national legislation, are not subject to national tax on their income from the United Nations and those who, like Ms. Johnson as a United States national, were subject thereto[17].

25. This Tribunal noted that the aim of reimbursing tax to United States citizens is clear from General Assembly resolution 13(I) of 13 February 1946, in which the Assembly:

> ... concurs in the conclusion … that there is no alternative to the proposition that exemption from national taxation for salaries and allowances paid by the Organization is indispensable to the achievement of equity among its Members and equality among its personnel.
>
> Therefore the General Assembly resolves that:

[16] UNDT/2011/144.
[17] Para. 23.

> 12. Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization …

26. The Tribunal then reasoned, that in order to rule on the legality of the Administration's decision to deny the staff member tax reimbursement, it would consider whether the principle of equal treatment of staff members as intended by the General Assembly had been respected.[18] This is also the position of UNAT in *Reilly* which held that;

> In interpreting a legislative provision such as a resolution of the General Assembly, the principle should be that the words of a legislative provision are to be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, object of the legislation, and the intention of the legislature.[19]

27. Although *Johnson* did not deal with a retroactive tax reimbursement, the principles that the Tribunal enunciated have general application and they apply to the case at bar. The Tribunal is guided by the principle that its task in resolving this matter is to determine whether in the exercise of his discretionary power not to grant an exception for retroactive tax reimbursement which is an area of the law governed by staff regulation 3.3(f) emanating from the General Assembly's resolution, the Administration advanced the legislative intent of ensuring equality of staff members in take-home salaries and allowances. If the answer is in the negative, the denial to exercise the discretion in favour of the Applicant is unlawful.

28. It should be noted that the Tribunal is cognizant of the most recent decision from this Tribunal on an issue related to tax reimbursement. The *LL* judgment is not based on staff regulation 3.3(f) and is therefore distinguishable from the present application[20].

29. The Administration declined the Applicant's request for a retroactive

[18] Para. 25.
[19] 2019-UNAT-975, para. 33.
[20] *LL* UNDT/2023/015.

reimbursement of tax payments because: (a) the Applicant did not meet the requirements under staff rule 3.17(ii); (b) the Applicant should have been aware of his legal obligations; and (c) making an exception [to pay him] would be prejudicial to the interests of other staff members or groups of staff members as per staff rule 12.3(b).[21]

30. The Tribunal has reviewed staff rule 3.17(ii) and agrees with the Applicant that it does not apply to tax reimbursement and therefore the Administration considered an irrelevant factor. Staff rule 3.17(ii) provides that:

> 3. A staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim:
>
> (i) …
>
> (ii) In every other case, within one year following the date on which the staff member would have been entitled to the initial payment.

31. It is clear from its natural and ordinary reading and considering the legislative intent governing tax reimbursement, that the Staff Rule was never meant to usurp legislative power governing equality of staff members in salaries and alowances. If the Staff Rule was meant to apply to tax reimbursement, it would have expressly stated so considering the nature of the subject matter.

32. Tax reimbursement is governed by a specific and unique legal regime carefully deliberated upon by the General Assembly. Staff regulation 3.3(f) cannot be read into "other payments" in staff rule 3.17(ii).

33. The Tribunal agrees with the Applicant's understanding that payments under staff rule 3.17(ii) relate to all staff and all nationalities of the United Nations and are not restricted only to USA citizens as in the case for reimbursement of income tax under staff regulation 3.3(f). Hence, the two cannot be read together or have same application. Therefore, the case of *Franco*[22] cited by the Respondent is distinguishable

[21] Reply, para. 25.
[22] 2022-UNAT-1238.

because that case dealt with a retroactive payment of special post allowance which is expressly covered under allowances and other payments in the staff rule 3.17(ii).[23]

34. A further distinction is that the source of the tax reimbursement is the Tax Equalization Fund[24] provided in staff regulation 3.3(f) while as the source of allowances and payments under staff rule 3.17(ii) is elsewhere, hence, the two provisions cannot apply *mutatis mutandis* to all staff members.

35. Furthermore, the Tribunal agrees with the Applicant that unlike allowances and payments in staff rule 3.17(ii) which are made to and "received" by a staff member as a benefit, the tax reimbursement is paid to a third party, the State or Federal Government of the USA. It is not a benefit that a staff member receives as an entitlement.[25] On the contrary it is a burden on the staff member because it comes from staff assessment.[26] The Respondent did not offer a contrary proposition.

36. The Respondent's argument that the scope of staff rule 3.17(ii) includes a payment to a staff member in reimbursement for national income taxation in respect of their United Nations salaries and emoluments is without legal basis.

37. The argument by the Respondent that Secretary-General prescribed ST/AI/1998/1 for the implementation of staff regulation 3.3 and staff rule 3.17(ii) and that section 3 of ST/AI/1998/1 provides that the tax reimbursement procedures shall be announced on a yearly basis by the Controller in an information circular is redundant because this Tribunal has already decided on the effect of these particular information circulars.[27] Further, in terms of the norms governing the Organization, information circulars are at the bottom of the legal framework, they may not be used to circumvent the will of the legislation.[28]

38. The Administrative instruction ST/AI/1998/1 refers to the information circular

[23] Page 53 Trial bundle, para. 3.
[24] Page 119, Trial bundle, para. 9.
[25] Hearing transcript, page 19.
[26] Hearing transcript, page 20 and Trial bundle page, 119, para. 9.
[27] *Johnson* UNDT/2011/144 affirmed by UNAT.
[28] *Villamoran* UNDT/2011/126 (affirmed by *Villamoran* 2011-UNAT-160).

only with respect to procedure. It does not authorize the Controller to add substantive provisions to the administrative instruction or, *a fortiori*, to staff regulation 3.3.[29] This is what the relevant part of ST/AI/1998/1 provides:

> Procedures that set out the requirements incumbent on staff members making applications for tax reimbursement or advances to pay estimated taxes are announced on a yearly basis by the Controller in an information circular.

39. The procedures provided in the information circulars are meant to facilitate the implementation of staff regulation 3.3(f). The cross reference to staff rule 3.17(ii) in the information circular to regulate tax reimbursement is acting beyond procedural implementation. The Controller has no authority to add substantive provisions to the administrative instruction or, *a fortiori*, to staff regulation 3.3.[30] An information circular is not law and the Respondent has not shown the law that the Applicant was ignorant of in pursuing the claim. The cases cited by the Respondent pertaining to ignorance of the law not coming to the aid of the Applicant are distinguishable [31].

40. The Administration's reasoning that the Applicant is presumed to be aware of his private legal obligations missed the point because the circumstances of the case show that, the Administration had already deducted from the Applicant's salary staff assessment whose sole purpose was for the Administration to apply to meet the Applicant's tax obligations. Having deprived the Applicant a sum of money in the form of staff assessment on the principle that it would be used to meet his private tax obligations, the Administration may not turn around and claim that the Applicant ought to have known about his private legal obligations. In any event, the Applicant's claim does not concern his private obligations but rather concerns the terms and conditions of his employment to be treated in an equitable manner. The Administration based the decision on an irrelevant factor which was contrary to the clear intention of the legislature.

41. The Administration also stated that it declined to make the retroactive payment

[29] *Johnson*, *op cit*, para. 44.
[30] *Johnson*, *op cit*, para. 44.
[31] *Rahman* 2012-UNAT-260, *El-Khatib* 2010-UNAT-066 and *Diagne et al* 2010-UNAT-067.

because making an exception [to pay the Applicant] would be prejudicial to the interests of other staff members or groups of staff members as per staff rule 12.3(b). The Respondent has not provided any evidence of prejudice to any specific staff member or group of staff members. It is mere speculation. On the contrary, by refusing to reimburse the Applicant, the Administration has contravened staff rule 12.3(b) which stipulates that:

> (b) Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

42. The exception that purportedly gives the Administration discretionary power to deny a staff member retroactive tax reimbursement is inconsistent with staff regulation 3.3(f) and the General Assembly resolution, and is therefore illegal.

43. The Respondent's argument that the Applicant should prove extenuating circumstances to claim tax reimbursement retroactively does not appear in the staff regulation. It is not expressed in the Administrative Instruction. It is a requirement imposed by the Administration without any legal basis.

44. Finally, the basis for denying the Applicant tax reimbursement was because he had delayed in submitting his tax returns. This ground is inconsistent with the principle of rationality.

45. The Respondent had no rational ground for denying the Applicant a retroactive payment of State taxes. The decision is not valid in the *Sanwidi*[32] sense, providing that when judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine

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[32] 2010-UNAT-084, paras. 40-42, *Associated Provincial Picture Houses Ltd v. Wednesbury Corporations,* [1947] 2 All ER 680 (CA).

whether the decision is absurd or perverse. In the case at bar, the decision is irrational with absurd consequences. In addressing the rationality test, UNAT held that;

> Issues of rationality and proportionality fall under the broad rubric of reasonableness as a ground of review, albeit introducing a more dialectical assessment than a standard of substantive reasonableness. Rationality as a review ground requires only that a decision be rationally connected to the purpose for which it was taken and be supported by the evidence. The decision must also further the purpose for which the legislative power was given to the administrator. Though variable, substantive reasonableness is typically a higher standard calling for a more intensive scrutiny of the administrative action, touching in some instances on the merits of the decision. A rational basis test is deferential because it calls for rationality and justification rather than the substitution of the court's opinion for that of the functionary on the basis that it finds the decision substantively incorrect. It seeks a condition of rationality in the relationship between the method and outcome of decision-making.[33]

46. Failure to exercise discretion to make a retroactive tax reimbursement was unreasonable considering that the Applicant's salary was already reduced by an amount of staff assessment deposited in the Tax Equalization Fund yet to be utilized to meet his tax obligations. The rational penalty for late application that does not offend the principle of equality of staff members is the penalty and interest that is levied by the Federal and State Governments which the Applicant must personally bear.

47. The Applicant's claim succeeds in the following respects:

State tax 2015-2018

The decision to deny the Applicant retroactive reimbursement of 2015-2018 State tax on ground that he filed his claim late is rescinded. The application is allowed.

48. The application is dismissed in the following respects:

(a) *State Tax 2019 and 2020*

During the hearing the Applicant conceded that he received the 2019 and 2020 State

[33] *Kallon* 2017-UNAT-742, para. 19.

tax reimbursements.[34] No reimbursement is ordered for 2019 and 2020 taxes.

(b) Federal tax 2017

49. The Applicant claimed underpayment of Federal tax of USD7,868 “due to inaccurate earnings statement provided by ITU”. In response, the Respondent proved during the hearing that the Applicant acknowledged in 2018 an error was identified and ITU sent a corrected statement of taxable earnings to his correct email address. The 2 February 2018 corrected statement of taxable earnings advised the Applicant to ignore the erroneous 26 January 2018 statement.[35] He has not shown why he did not utilize the revised version of statement of earnings for tax reimbursement as timely provided by ITU in 2018. This was a self-induced liability which the Applicant must bear as he had the responsibility to ensure that his tax claims were accurate. The excuse that the email from ITU with revised statement of earnings must “have gone through the cracks” is untenable.[36] This claim is dismissed.

Interest and penalties 2015- 2018

50. The Applicant contributed to the delay in filing and claiming tax reimbursement. He should bear the interest and penalties arising from the delayed payment up to 26 January 2022 when the Administration denied his application for retroactive reimbursement.

51. Any penalty and interest that accrued on the unpaid tax for 2015-2018 from 27 January 2022 shall be borne by the Respondent. The cause of the delay is attributed to his failure to exercise discretion lawfully.

Judgment

52. In view of the foregoing, the Tribunal DECIDES:

a. The Respondent shall reimburse to the Applicant his 2015-2018 State

[34] Hearing transcript, page 41.
[35] Trial bundle, pages 68-71.
[36] Hearing transcript, page 41.

tax.

b. The Respondent shall also reimburse to the Applicant any penalty and interest accrued on unpaid tax for 2015-2018, from 27 January 2022.

c. All the other claims are dismissed.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 28th day of March 2023

Entered in the Register on this 28th day of March 2023

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi